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SENATE

REPORT  
No. 59

ALIEN PROPERTY CLAIMS

JANUARY 29, 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 28]

The Committee on the Judiciary, to which was referred the bill (S. 28) to amend the Trading With the Enemy Act, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

AMENDMENT

Strike out all after the enacting clause and insert in lieu thereof the following:

That subsection 9 (a) of the Act entitled "Trading With the Enemy Act," approved October 6, 1917, as amended (50 U. S. C. Appendix, 1946 edition, sec. 9 (a)), is amended by striking out the period at the end thereof and inserting in lieu thereof a colon and the following: "Provided, That when the property in issue is money, as distinguished from stock, bonds, or tangible property, if the President, or the officer or agency designated by him under section 32 of this Act, shall have determined that a person other than said claimant is entitled to the interest, right, or title claimed by said claimant and sued for under this section as hereinbefore provided, or to any part of said interest, right, or title, and if the judgement of the district court is against the claimant, then the Alien Property Custodian or the Treasurer of the United States may pay, convey, transfer, assign, or deliver such money, or such part thereof, to such other person in accordance with this section or in accordance with section 32 of this Act unless said claimant shall file a bond with sufficient surety approved by the court conditioned for payment to the Alien Property Custodian or the Treasurer of the United States, as the case may be, for the use of such other person, of damages for delay if an appeal is taken and dismissed, or if the judgment is affirmed. In the case of actions now pending on appeal on or prior to the date of the approval of this proviso, such bond shall be filed with the circuit court of appeals within the time permitted for filing appeals; in the case of actions now pending on appeal, such bond shall be filed within 30 days after the date of approval of this proviso. In its discretion, the court may modify or waive the requirements of the foregoing proviso, if it finds that such

requirements would result in undue hardship to an appellant desiring to appeal in good faith and not for frivolous or nuisance purposes. The court's finding and ruling in this respect shall be final and shall not be subject to review.

"(1) Any payment, conveyance, transfer, assignment, or deliverance by the Alien Property Custodian or by the Treasurer of the United States made pursuant to this section or section 32 of this Act shall discharge the said Custodian or Treasurer from all further responsibility for the money so paid, conveyed, transferred, assigned, or delivered, and no suits or actions shall thereafter be instituted or maintained against the said Custodian or Treasurer in relation to any such money. This subsection shall not preclude appeals from decisions of lower courts, but no judgments shall be entered requiring the said Custodian or Treasurer to pay, convey, transfer, assign, or deliver the same money more than once."

The purpose of the amendment is discussed below.

#### PURPOSE

An identical bill passed the Senate in the Eighty-first Congress.

The purpose of the bill is to discourage the exploitation of appellate procedures in the Federal courts by appellants in certain alien property suits who, by virtue of an interpretation of section 9 (a) of the Trading With the Enemy Act now prevailing in the Office of Alien Property (hereinafter referred to as "OAP"), are permitted to maintain appeals without supersedeas bonds. The existing interpretation permits an appellant to tie up large sums of money for long periods, with no risk other than court costs, while he negotiates with the owner of the property for a settlement out of court as the price of withdrawing his claim.

#### SOURCE OF PROBLEM

The need for S. 28 stems from an interpretation of section 9 (a) of the act currently prevailing in the Office of Alien Property. That section provides that any nonenemy claiming any right, title, or interest in any property held by OAP may institute an action in a United States district court. The concluding sentence of the section states that if such an action is instituted, OAP shall retain custody of the property "\* \* \* until any final judgment or decree shall be entered \* \* \*"

The interpretation which S. 28 would modify or ameliorate concerns the words "final judgment or decree." OAP has for many years held that "final" means absolutely final—a judgment from which there is no appeal. In other words the current OAP interpretation requires that Office to hold the property, once a section 9 (a) suit is instituted, until the period for noting appeals runs out after judgment by a district or circuit court, or until the rehearing period expires following a Supreme Court judgment. This is so even though OAP may be aware that the suit is being prosecuted solely for its nuisance value.

Because of this interpretation OAP considers itself bound by statute to hold the property during appeal, and being bound by statute is powerless to insist that the appellant post a supersedeas bond to pay damages if the judgment of the lower court is affirmed. The net result of such interpretation is that anyone, even a complete stranger to the property, can now file an action under section 9 (a), with no more risk than court costs, and by appealing and employing dilatory tactics can freeze large sums of money in OAP for as long as 4 or 5 years. Many of the true owners are refugees from countries overrun

by the German Armies. Most of them have been deprived of everything they had except their clothing and their money held by OAP. In their extreme need they are virtually forced by the existing interpretation of section 9 (a) to settle out of court.

#### NORMAL CIVIL PROCEDURE

In any ordinary civil action in the Federal courts a party who appeals a judgment is required to answer in damages to the other party for the loss of use of any property involved, if the appellate court sustains the lower court. If the property is money, the measure of damages for loss of use is usually fixed at interest at the legal rate.

This principle of indemnity for loss of use during appeal has been in existence since the beginning of our Federal judicial system. Currently it is incorporated in rules 62 (d) and 73 (d) of the Federal Rules of Civil Procedure. Rule 62 (d) provides that an appellant may obtain a stay of execution by giving a supersedeas bond. Rule 73 (d) describes the coverage required of supersedeas bonds in different types of actions. Together they reflect the principle of indemnity for loss of use set out in the paragraph above. The only exceptions provided for are injunctions, receiverships, and patent accounting actions. In these excepted cases (and only in these cases) the court is given discretion to refuse stays of execution and to determine the protection and security due the appellee.

Unless the judgment of the lower court is stayed as provided by rules 62 (d) and 73 (d), the lower-court judgment is carried out without regard to the appeal.

#### OPINION OF COMMITTEE

It is the considered opinion of the committee that the existing interpretation of section 9 (a) as described above is unfair and inequitable. When compared to the procedure applicable to ordinary civil actions, the procedure which now obtains with respect to section 9 (a) suits obviously perpetrates an injustice upon the rightful owner by permitting the appellant to tie up the property for long periods with little risk, and by depriving the owner of both possession and damages for loss of use. The present procedure with respect to section 9 (a) suits, by comparison with the usual procedure also results, or may result, in the unjust enrichment of appellant. The absence of any material risk on the appellant's part makes it possible for an appellant to exploit dubious claims, or even claims wholly without merit, for their nuisance value. Information presented to the committee indicates that, in at least one instance, the value placed on such a claim was exorbitant. Even though a settlement is not made out of court, such an appellant is unjustly enriched by being relieved of the risk of damages for loss of use.

#### PROPOSED REMEDY

Much thought has been given by the committee, by OAP, and by interested individuals to the problem of how the existing situation could best be remedied. Initial efforts were directed to the end of completely prohibiting nuisance suits. Extensive discussion indicated that it was virtually impossible to prohibit nuisance cases absolutely

without, at the same time, jeopardizing the rights of bona fide appellants. It was eventually determined that the most logical and reasonable solution was to require supersedeas bonds.

As finally drafted, S. 28 would become effective only after the claim of the litigating party has been rejected by a United States district court. Probably in all, certainly in the great majority of, such cases the claim will have also been rejected by OAP before it is considered by a district court. Further, the provisions of the bill would not become effective unless OAP has determined that some person other than the litigating party is the true owner of the property in issue. The committee is informed that when title to vested property is contested, both OAP and district courts make very thorough and complete examinations of the conflicting claims. The committee is aware of no logical or persuasive arguments why an appellant in a section 9 (a) action should not be required to provide the same type bond on appeal that any appellant in a comparable civil action is required to provide if he desires to stay the judgment of the lower court.

One of the recognized purposes of supersedeas bonds in all types of civil actions is to discourage frivolous or vexatious suits. Another recognized purpose of supersedeas bonds is to compensate an appellee for the loss of use of his property if the appellate court finds such loss of use was unjustified. The judicial policy of the United States requires indemnity for loss of use. The existing interpretation of section 9 (a) is at odds with that policy.

#### QUESTIONS CONSIDERED

In the course of the committee's consideration of the bill, certain questions were raised which it seems advisable to mention. It was pointed out that section 9 (a) actions bear some resemblance to actions in replevin, and doubt was expressed as to the propriety of requiring supersedeas bonds of unsuccessful plaintiffs in replevin actions on appeal. It was determined that, by virtue of rule 64, Federal Rules of Civil Procedure, replevin actions in Federal courts are conducted according to the laws and procedural rules of the State in which the Federal court concerned has its situs; that in the great majority of States, if not all States, a plaintiff in a replevin action must provide a replevin bond before instituting such action; that the replevin bond so required subjects the plaintiff to liability for costs and damages for loss of use; that the liability on such bonds continues through appeals. The committee was informed that in some instances State courts have required supersedeas bonds of plaintiffs in replevin even though plaintiffs had previously posted replevin bonds, and notwithstanding the fact that the two bonds covered the same liability. Since section 9 (a) actions will not begin as replevin suits, and do not require plaintiff to provide a bond similar to a replevin bond, the committee reached the conclusion that it is just and reasonable to require a supersedeas bond as provided in the bill.

One question considered by the committee was the propriety of requiring an appellant to provide a bond which may benefit persons not joined as parties to the action. The bill provides that the bond is to be made payable to the Alien Property Custodian or the Treasurer of the United States "for the use of" the person previously determined



to be the rightful owner. Thus the actual or use beneficiary under the bond need not necessarily be a party to the action. It seems probable to the committee that in many cases the determined owner will be a party; that if he is not a party, the cause will undoubtedly lie in the provisions of section 9 (a) limiting parties in actions under that section to "nonenemies." The definition of "enemy" in the act is very broad. It includes all persons who resided in territories occupied by enemy forces, whether such persons were actually hostile or not. In 1947 Congress gave OAP discretionary authority to return property to nonhostile former owners, even though they might be within the definition of "enemy." But the limitation of section 9 (a) actions to nonenemies was not modified. Hence some persons who are determined to be the rightful owners by OAP will be unable to intervene in section 9 (a) suits. But the beneficiaries of any bond required by this bill will have been found and declared by OAP to be the true owners of the property involved in the suit. OPA will be, in effect, a voluntary trustee for the determined owner when the supersedeas bond is posted. One of the fundamental duties of a trustee is to protect the interests of his beneficiaries.

Another question considered was whether, under the provisions of the bill, it might not be possible for the Government to be faced with the obligation of paying the same claim more than once. A new subsection has been added by the committee for the purpose of precluding any such possibility.

Another question considered by the committee in some detail was whether the providing of a bond should or should not be left to the discretion of the court. While the current rules of procedure leave no discretion to the court except in actions involving injunctions, receiverships, and patent infringement accountings, the committee deemed it advisable to vest the court with discretion in section 9 (a) actions. Further, the committee had in mind situations wherein the decisions arrived at by OAP and the district court may have turned on some narrow legal point and the claimant wishes to appeal in complete good faith but is too impecunious to provide a supersedeas bond. Since the purpose of the bill is to decrease the probability of nuisance appeals, the committee assumes that courts will examine requests for modification or waiver with care; that doubtful cases will be decided in favor of requiring bonds. The court's ruling with respect to requiring or not requiring bonds is made final lest the objective of the bill be frustrated by an appeal of such ruling.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### TRADING WITH THE ENEMY ACT, AS AMENDED

\* \* \* \* \*  
 SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the

United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise ~~terminated.~~ *terminated: Provided*, That when the property in issue is money, as distinguished from stock, bonds, or tangible property, if the President, or the officer or agency designated by him under section 32 of this Act, shall have determined that a person other than said claimant is entitled to the interest, right, or title claimed by said claimant and sued for under this section as hereinbefore provided, or to any part of said interest, right, or title, and if the judgment of the district court is against the claimant, then the Alien Property Custodian or the Treasurer of the United States may pay, convey, transfer, assign, or deliver such money, or such part thereof, to such other person in accordance with this section or in accordance with section 32 of this Act unless said claimant shall file a bond with sufficient surety approved by the court conditioned for payment to the Alien Property Custodian or the Treasurer of the United States, as the case may be, for the use of such other person, of damages for delay if an appeal is taken and dismissed, or if the judgment is affirmed. In the case of actions not pending on appeal on or prior to the date of approval of this proviso, such bond shall be filed with the circuit court of appeals within the time permitted for filing appeals; in the case of actions now pending on appeal, such bond shall be filed within thirty days after the date of approval of this proviso. In its discretion, the court may modify or waive the requirements of the foregoing proviso, if it finds that such requirements would result in undue hardship to an appellant desiring to appeal in good faith and not for frivolous or nuisance purposes. The court's findings and ruling in this respect shall be final and shall not be subject to review.

(1) Any payment, conveyance, transfer, assignment, or deliverance by the Alien Property Custodian or by the Treasurer of the United States made pursuant to this section or section 32 of this Act shall discharge the said Custodian or Treasurer from all further responsibility for the money so paid, conveyed, transferred, assigned, or delivered, and no suits or actions shall thereafter be instituted or maintained against the said Custodian or Treasurer in relation to any such money. This subsection shall not preclude appeals from decisions of lower courts, but no judgments shall be entered requiring the said Custodian or Treasurer to pay, convey, transfer, assign, or deliver the same money more than once.

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